

REMARKS

I. Overview

Claims 1-11 are pending in the present application. Applicant respectfully requests reconsideration of the claims in view of the following remarks.

The issues raised by the Examiner in the current Office Action dated November 12, 2009 (Final Action) are as follows:

- Claims 1-11 have been rejected under 35 U.S.C § 103(a) as assertedly being anticipated by U.S. Patent No. 5,732,213 to Gessel, et al. (hereinafter “Gessel”) in view of U.S. Patent No. 6,560,723 to Matsui (hereinafter “Matsui”) and further in view of WO 98/57268 to Swift, et al. (hereinafter “Swift”).

Applicant respectfully traverses the outstanding claim rejections and requests reconsideration and withdrawal in light of the remarks presented herein.

II. Rejection under 35 U.S.C. § 103

Independent claims 1 and 11 stand rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over Gessel in view of Matsui and further in view of Swift.

A. The cited references fail to disclose messages containing a variable or performing one of several activities as a function of the content of the variable.

As noted above, independent claim 1, as amended, recites:

f) defining within the communication data graphically a message to be received at the protocol tester from the device under test which contains a variable wherein the protocol tester performs one of several activities as a function of the content of the variable.

Independent claim 11, as amended, recites:

means for defining within the communication data graphically a message to be received at the protocol tester from the device under test which contains a variable wherein the protocol tester performs one of several activities as a function of the content of the variable.

The Final Action admits that the Gessel reference fails to disclose this limitation, but cites the Matsui reference as disclosing these limitations. (Final Action at 3-4, 6). More specifically,

the Final Action cites column 1, lines 58-65 and column 2, lines 10-14 of Matsui in connection with this limitation. The cited sections of Matsui are copied below.

Test scenario creating unit **150** includes test sequence editor **151** for describing a test sequence which is the order of test events, i.e. inputs and responses, PDU editor **152** for specifying a test event in a test sequence to set parameters for Nth layer (N)-PDU (Protocol Data Unit), and ASP editor **153** for specifying a test event in a test sequence to set parameters for lower level (N+1)-ASP (Abstract Service Primitive). Test result analyzing unit **170** includes test result

10 Test scenario creating unit **150** creates a test sequence and test scenario for testing a protocol for a system which implements an arbitrary Nth layer in an OSI reference model. Test executing unit **160** performs a test of a system under test on the basis of the created test scenario. After the

The cited text in Matsui teaches that a test scenario creating unit 150 describes a test sequence, such as an order of input and output events. A PDU editor 152 specifies a test event to set parameters in an Nth layer PDU, and an ASP editor 153 specifies a test event to set parameters for a lower-level ASP. The test scenario is used for testing a protocol for a system which implements an Nth layer in an OSI reference model. The test defined in the scenario is performed by test executing unit 160 on a system under test.

Matsui discloses creating a test sequence comprising “test events, i.e. inputs and responses.” This test sequence is for use by test executing unit 160. Applicant understands the Final Action to equate the test event “inputs” to messages that may be received from the device under test. The cited text fails to disclose that the “message [or input] to be received . . . from the device under test . . . contains a variable wherein the protocol tester performs one of several activities as a function of the content of the variable.” Instead the Matsui test executing unit 160 running a test sequence receives unspecified “inputs” and performs unspecified “responses.” There is no disclosure in Matsui that a “variable” in the input message triggers the protocol tester to “perform one of several activities as a function of the content of the variable” as required in the claims.

The questions that remain in connection with the Matsui disclosure are: (1) what “variable” is disclosed in Matsui, and (2) what are the “several activities” performed as a function of the “variable.”

B. The cited references fail to disclose specifying a switch functionality.

Claim 2 requires “specifying a switch functionality which the other instance executes as a function of the content of the variable.” The Final Action identifies column 7, lines 20-25 of Matsui as teaching this limitation. (Final Action at 4). The cited section of Matsui is copied below.

transmission. Test message input/output function unit 90 is, as an opposite facility to a facility under test, responsible for 20
a function for controlling a test such as start, stop or the like of a simulation test in addition to transmission and reception of a message in accordance with the description of the test scenario. All log information such as scenario execution result is stored in log buffer 100. 25

The Final Action further characterizes the cited text as follows: “test message function unit that perform[s] transmission and reception based on information content.” (Final Action at 4).

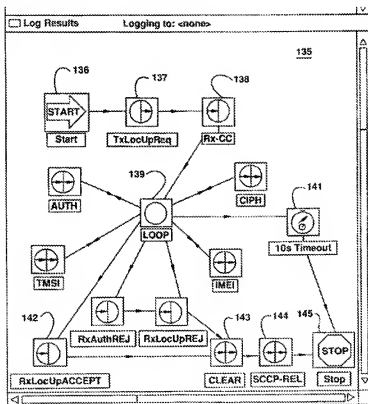
The Matsui disclosure may “perform transmission and reception based on information content” as suggested in the Final Action; however, it does not specify “a switch functionality” that the other instance “executes as a function of the content of the variable” as required in claim 2. The Matsui disclosure is missing the claimed “variable” as discussed above. Additionally, Matsui does not teach or suggest a specific “switch functionality” that is executed based on “the content of the variable” or any other trigger. The cited text in column 7 merely states that the test message input/output function unit controls the start and stop of a test simulation based on a test scenario description. There is no teaching or suggestion in Matsui that “switch functionality” may be part of a test scenario description.

C. The cited references fail to disclose specifying a loop functionality.

Claim 3 requires “specifying a loop functionality which the other instance executes as a function of the content of the variable.” The Final Action identifies column 11, lines 10-15 and

element “139” in Figure 13 of Gessel as teaching this limitation. (Final Action at 4-5). The cited sections of Gessel are copied below.

with arrows on both sides of the center vertical line. A simulated node 139 labeled “Loop” is positioned in the center of the display and is a holding point where the simulation waits for another message to be received. A timer 141 monitors the loop for activity, and if there is no activity for a preset time period (e.g., 10 seconds), the test sequence is stopped.



Although the cited section of Gessel does, in fact, identify a “loop” function, it is not the claimed loop function. Claim 3 requires “loop functionality” that is executed “as a function of the content of the variable.” Gessel discloses a loop function that is part of a simulation and is used by the simulation as a “holding point” at which the simulation “waits” for message. Given this description in Gessel, “LOOP 139” appears to be mislabeled and should be labeled “wait,”

“pause,” “hold,” or something similar. The purported loop function in Gessel is not the claimed “loop functionality,” but is simply a step in a test simulation.

LOOP 139 is not executed “as a function of the content of the variable” as required in claim 3. Gessel’s LOOP 139 occurs as part of the test simulation, but is not triggered or executed by a received message. The opposite is actually true - LOOP 139 is waiting for a message. Gessel’s LOOP function occurs before the message and, therefore, before the content of any variable in the message is known.

III. Conclusion

The proposed combination of the Gessel, Matui and Swift references fails to teach or suggest each and every limitation of pending independent claims 1 and 11. In particular, the proposed combination does not teach or suggest messages containing a variable, performing one of several activities as a function of the content of the variable, switch functionality, or loop functionality.

Claims 2-10 depend from independent claim 1 and add further limitations. It is respectfully submitted that these dependent claims are allowable by reason of depending from an allowable claim as well as for adding new limitations.

Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicant’s attorney at 214-722-8983 so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,

January 12, 2010

Date

/Michael J. Fogarty, III/

Michael J. Fogarty, III
Attorney for Applicant
Reg. No. 42,541

FOGARTY, L.L.C.
3010 LBJ Freeway, Suite 1200
Dallas, Texas 75234
Telephone: 214-722-8983
Facsimile: 214-272-2778